"lay-out". It seems to us therefore that the question of lay-out, as it then was, and which now equates to subdivision in the Planning Ordinance or Act, as the case may be, in respect of the demised premises must have been in the contemplation of the parties herein and that, therefore the question of a fundamental change in the conditions of the 1957 Lease does not arise;

(6) That the Respondents cannot avail themselves of the provisions of Section 6(i)(a) of the Limitation Act to resist the claims of the Appellant for specific performance in respect of a lease for the demised premises for the term August 1, 1977 to July 31, 1987 for the reason that the Appellant always had an equitable right to a renewal of the lease and equity looks upon as done what ought to have been done.

There will therefore be an order for the specific performance of the agreement for a lease arising under the 1957 Lease; the Respondents are to execute a sealed lease in favour of the Appellant in respect of 322-F Changi Road for a term of 10 years from August 1, 1977 to the July 31, 1987 on the same terms and conditions as in the 1957 Lease. Liberty to Apply.

Order accordingly.

Solicitors: *L.A.J. Smith; Wee Swee Teow & Co.*

MENG LEONG DEVELOPMENT PTE. LTD. v. JIP HONG TRADING CO. PTE. LTD.

[C.A. (Kulasekaram, Lai Kew Chai & Chua JJ.) April 22, 1983]

[Singapore – Civil Appeal No. 81 of 1981]

Land Law – Option to purchase property given to, and exercised by respondents – Repudiation by vendor/appellant – Caveat lodged by respondents – Vendor sought to sell property to third party – Claim for specific performance by respondents.

Contract – Option to purchase exercise by respondents – Repudiation by vendor – Specific performance against vendor.

The appellants, property developers, granted in option in writing to the respondents to buy the property at No. 27A Jalan Chengkek, Singapore in March 1979. The respondents duly exercised the option on April 23, 1979. In May 1979, the appellants purported to repudiate the agreement. The respondents then lodged a caveat against the property on July 4, 1979. In the face of the said caveat, the appellants purported to sell the property to a third party who had notice of the respondents' caveat. The trial court awarded $297,000 as damages against the appellants. The appellants appealed and the respondents cross-appealed.

Held, dismissing the appeal and allowing the cross-appeal: an order for specific performance was the most appropriate remedy. All the equities were in favour of the respondents. To have ordered damages would amount to taking away the proprietary rights of the respondents in favour of the third party whose rights must be subordinated to the superior claims of the respondents.

COURT OF APPEAL.

L.A.J. Smith for the appellants.

Y.R. Jumabhoy (*R. Ramason* with him) for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): At the adjourned hearing of this Appeal, we dismissed the appellants' appeal on quantum and allowed the cross-appeal of the respondents. We set aside the award of $297,000 ordered by the High Court as damages payable by the appellants and we ordered instead specific performance of an agreement under which the appellants had on April 23, 1979 agreed to sell No. 27A Jalan Chengkek, Singapore (hereinafter referred to as "the property") for a consideration of $152,500. We now give our reasons.

The appellants were property developers. In late March 1979 they granted an option in writing to the respondents to buy the property. On April 23, 1979 the respondents duly exercised the option. But in the second half of May 1979 the appellants purported to repudiate the agreement on grounds which were canvassed before the High Court but which no longer need concern us save to note that they were without merits at all.

On July 4, 1979 the respondents lodged a caveat bearing No. CV 27207 under the provisions of the Land Titles Act against the property to protect their interests as purchasers. Now, it is well known that the effect of the caveat under the Torrens System is to preserve the priority and protect the interests *in rem* of the caveator against any interest subsequently appearing on the Land Register by way of a caveat. So long as a caveat remains effective, the Registrar of Titles is prohibited from registering any "instrument" (as defined in the Act) which is inconsistent with the caveat: section 103(5).

In the face of the caveat, the appellants on

September 17, 1979 purported to sell the property for $126,500 to two brothers, Chou Yim Tet and Chew Yim Min, who, however, knew and had notice of the respondents' caveat.

In these circumstances, the respondents commenced proceedings in the High Court on September 26, 1979. As was noted by the learned trial Judge, the respondents had claimed for:–

(i) Specific performance of the contract;

(ii) An injunction whether by themselves or their servants or agents from selling, mortgaging or otherwise dealing with the premises; and

(iii) Further or alternatively, damages for breach of contract.

At the trial, evidence was led to show that the appellants, who alleged that they were in need of money, had subsequently sold the property to the two brothers. The two brothers had moved into occupation and had carried out some renovations. Presumably on the basis of these evidence, former counsel for the appellants, Miss Irene Lim, submitted to the learned trial Judge that by reason of what had happened, specific performance might not be the possible remedy. Counsel for the appellants, Mr. L.A.J. Smith, frankly admitted before us that he saw no reason why specific performance could not have been ordered in all the circumstances of this cases.

In our view, an order for specific performance was the most appropriate remedy. All the equities were in favour of the respondents. To have ordered damages would amount to taking away the proprietary rights of the respondents in favour of the two brothers whose rights must be subordinated to the superior claims of the respondents. The two brothers are not without remedy: they should pursue their claims in their pending suit against the appellants.

Appeal dismissed; Cross-appeal allowed.

Solicitors: *L.A.J. Smith; Mallal & Namazie.*

PARKER DISTRIBUTORS (SINGAPORE) PTE. LTD. v. A/S D/S SVENBORG & D/S af 1912 A/S

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Rajah JJ.) April 28, 1983]

[Singapore – Civil Appeal No. 107 of 1980]

Shipping Law – Carriage of goods – Goods lost or damaged – Breach on stowage – No provision regarding nature of goods in bill of lading – Shipowners entitled to limit liability to US$500 per package – Carriage of Goods by Sea Act (U.S.), s. 4(5).

Bills of Lading – Contract of carriage of goods by sea – Goods of high value not stored in "strong room or locker storage" – Goods lost or damaged – Breach on stowage – No mention of nature of goods in bills of lading – Shipowners entitled to limit liability to US$500 per package under Carriage of Goods by Sea Act (U.S.), s. 4(5).

In the present case 17 packages of Parker writing instruments belonging to the appellants were shipped from San Francisco, U.S.A. to Singapore on the respondents' vessel. It was a term of the contract of carriage that there would be "strong room or locker storage". The goods were not so stowed as the vessel did not have a strong room nor any locker space. 5 packages were lost and 3 were damaged resulting in a loss of $86,086.15 to the appellants. The trial court awarded the appellants $7,274.11 and interest on the basis that the respondents were entitled to limit their liability under the provision for limitation of US$500 per package as set out in section 4(5) of the U.S. Carriage of Goods by Sea Act. The appellants appealed.

Held, dismissing the appeal: (1) the respondents were entitled to rely on the provisions of the said section 4(5). If the appellants had wanted to avoid the limitation provisions, they or the shippers who had endorsed the bill of lading to the appellants should have declared the nature and value of the goods; in which case, the appellants would have had to pay much higher freight;

(2) it was or must have been the intention of the parties to the contract that in these circumstances the respondents could limit their liability to US$500 per package.

Cases referred to:

(1) *Photo Production Ltd.* v. *Securicor Transport Ltd.* [1980] 1 All E.R. 556.

(2) *Suisse Atlantique Societe D'Armement Maritime S.A.* v. *N.V. Rotterdamsche Kolen Centrale* [1966] 2 W.L.R. 944, 988 & 989.

COURT OF APPEAL.

P. Selvadurai for the appellants.

G. Pannirselvam for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): 17 packages of Parker writing in-